IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELALTE JURISDICTION

FIRST APPEAL NO. 294 OF 1993

Union of India, represented by
the General Manager of Central Railways,
V.T., Bombay. ..Appellant

Vs.
M/s Rohit Brothers,
A First, carrying on business
at Commercial manor, 68-70,
Liladhar Lakhamshi Marg,
Bombay 400 009. ..Respondent

Mr. A.N. Samant for the appelalnts
Mr. R.V. Govilkar for respondents.

CORAM : ANOOP V.MOHTA J.
DATE : 14TH DECEMBER, 2005.

ORAL JUDGMENT

. This is a first appeal filed by the appellant, Union of India through the General Manager of the Central Railway, V.T. Bombay, and thereby, challenged the order dated 24th February, 1993, whereby, the Vice Chairman (Judicial), Legal Claim Tribunal, Bombay has directed the appellant to pay Rs. 8,569/- to the respondents-claimants with interest at the rate of 12% per annum from the date of filing of the application till realisation and proportionate costs. Therefore, this appeal.

2. Original applicants-respondents, on 21/6/1989 booked their goods 244 bags of Toor Dal under RR No. 842971, Ex-Itarsi to Wadibunder. On 7/7/1989 the consignment reached destination but all the bags were found damaged because of rain water. On 10/7/1989, a request was made for assessment of damages. The assessment was done & a shortage/damages certificate dated 25th August, 1989 was issued, by the Railway Surveyor M/s Superintendent Co. of India (Pvt.) Ltd. A claim of Rs.24,510/- was made but payment was made by the appellant of Rs. 14,896/- on 5/10/1989. The claimant-respondents therefore, accepted the claim under protest. The respondents therefore, on 31/1/1991 preferred this application No. 32 of 1991 and claimed balance of Rs.9614/- with interest at the rate of 18% per annum from the date of application till payment. The parties filed their respective affidavits. On 24/2/1993. By a judgment and decree delivered by the Railway Tribunal, the appellant-respondent have been directed to make the payment of Rs. 8569/- with interest at the rate of 12% per annum as referred above.

3. Heard the learned Counsel, Mr. Samant,

appearing for the appellant. The contention as raised in this first appeal have been considered already in two separate judgments of this Hon'ble High Court in **(Union of India V. M/s Eknath Khemchand) First Appeal No. 1136 of 1992, dated 6th May, 2005 (Mr. Justice D.G. Deshpande).** Basically around the term "said to contain" as reflected in RRS in issues and secondly of 12% interest as awarded. and by second judgment in **(Union of India V. M/s WIMCO LTD.) First Appeal No. 782 of 1992, dated 16th August, 2005 (Mr. Justice D.G. Deshpande)** in reference to the acceptance of money, in full and final account and or under protest. In M/s Wimco Ltd. it has been held that having once accepted the payment under protest, the claimants-respondents do not leave their rights to claim balance compensation. The same issue has been considered in Union of India V. M/s K.T. Rizvi and Brothers in A.I.R. 1985 Bombay 84. Therefore, in the present case also even though the compensation were accepted, but as it was under protest, the respondents-claimants application for balance amount therefore, cannot be rejected on this plea. They have a right to claim the balance amount.

4. The learned Judge, after considering the

material placed on the record and having assessed the total amount of Rs. 24,510/- on the basis of the shortage/ damage certificate granted by the appellants officer, the entitlement of balance amount awarded in favour of the respondents. The claim was made for the 220 bags, but it was granted only for 110 bags. The grant of entitlement of balance Rs. 9614/- therefore, is just and fare compensation, as the respondents had already received the amount of Rs. 14,896/-.

5. So far as, interest is concerned, in view of the above two judgments, I am inclined to modify the rate of interest. The rate of interest should be in the facts and circumstances of the case, 9% per annum from the date of filing of application till realisation of the amount instead of 12% per annum. The amount to be calculated accordingly.

6. in view of this, the appeal is partly allowed. The principal amount as awarded will carry interest at the rate of 9% per annum from the date of application. The excess amount if any already received by the respondent it shall liable to be adjusted and or refunded accordingly. No order as to cost.

[5]

[ANOOP V. MOHTA, J.]